

## § 349.10

## 12 CFR Ch. III (1–1–14 Edition)

defined in §3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2));

- (v) Commercial paper;
- (vi) Corporate notes or bonds;
- (vii) General obligations of a sovereign nation;
- (viii) Interests in money market mutual funds; and
- (ix) Such other financial instruments as the FDIC deems appropriate.

(2) *Haircuts.* An FDIC-supervised insured depository institution shall establish written policies and procedures that include:

- (i) Haircuts for noncash margin collected under this section; and
- (ii) Annual evaluation, and, if appropriate, modification of the haircuts.

(c) *Separate margin account.* Margin collected by the FDIC-supervised insured depository institution from a retail forex customer for retail forex transactions or pledged by a retail forex customer for retail forex transactions shall be placed into a separate account containing only such margin.

(d) *Margin calls; liquidation of position.* For each retail forex customer, at least once per day, an FDIC-supervised insured depository institution shall:

- (1) Mark the value of the retail forex customer's open retail forex positions to market;
- (2) Mark the value of the margin collected under this section from the retail forex customer to market;
- (3) Determine if, based on the marks in paragraphs (c)(1) and (2) of this section, the FDIC-supervised insured depository institution has collected margin from the retail forex customer sufficient to satisfy the requirements of this section; and
- (4) Collect such margin from the retail forex customer as the FDIC-supervised insured depository institution may require to satisfy the requirements of this section, or liquidate the retail forex customer's retail forex transactions.

(e) *Set-off prohibited.* An FDIC-supervised insured depository institution may not:

- (1) Apply a retail forex customer's retail forex obligations against any funds or other asset of the retail forex customer other than margin in the sepa-

rate margin account described in paragraph (c) of this section;

(2) Apply a retail forex customer's retail forex obligations to increase the amount owed by the retail forex customer to the FDIC-supervised insured depository institution under any loan; or

(3) Collect the margin required under this section by use of any right of set-off.

### § 349.10 Required reporting to customers.

(a) *Monthly statements.* Each FDIC-supervised insured depository institution must promptly furnish to each retail forex customer, as of the close of the last business day of each month or as of any regular monthly date selected, except for accounts in which there are neither open positions at the end of the statement period nor any changes to the account balance since the prior statement period, but in any event not less frequently than once every three months, a statement that clearly shows:

- (1) For each retail forex customer:
  - (i) The open retail forex transactions with prices at which acquired;
  - (ii) The net unrealized profits or losses in all open retail forex transactions marked to the market;
  - (iii) Any money, securities or other property in the separate margin account required by §349.9(c); and
  - (iv) A detailed accounting of all financial charges and credits to the retail forex customer's retail forex accounts during the monthly reporting period, including: money, securities, or property received from or disbursed to such customer; realized profits and losses; and fees, charges, commissions, and spreads.

(2) For each retail forex customer engaging in retail forex transactions that are options:

- (i) All such options purchased, sold, exercised, or expired during the monthly reporting period, identified by underlying retail forex transaction or underlying currency, strike price, transaction date, and expiration date;
- (ii) The open option positions carried for such customer and arising as of the end of the monthly reporting period, identified by underlying retail forex

transaction or underlying currency, strike price, transaction date, and expiration date;

(iii) All such option positions marked to the market and the amount each position is in the money, if any;

(iv) Any money, securities or other property in the separate margin account required by § 349.9(c); and

(v) A detailed accounting of all financial charges and credits to the retail forex customer's retail forex accounts during the monthly reporting period, including: money, securities, or property received from or disbursed to such customer; realized profits and losses; premiums and mark-ups; and fees, charges, and commissions.

(b) *Confirmation statement.* Each FDIC-supervised insured depository institution must, not later than the next business day after any retail forex transaction, send:

(1) To each retail forex customer, a written confirmation of each retail forex transaction caused to be executed by it for the customer, including offsetting transactions executed during the same business day and the rollover of an open retail forex transaction to the next business day;

(2) To each retail forex customer engaging in forex option transactions, a written confirmation of each forex option transaction, containing at least the following information:

(i) The retail forex customer's account identification number;

(ii) A separate listing of the actual amount of the premium, as well as each mark-up thereon, if applicable, and all other commissions, costs, fees and other charges incurred in connection with the forex option transaction;

(iii) The strike price;

(iv) The underlying retail forex transaction or underlying currency;

(v) The final exercise date of the forex option purchased or sold; and

(vi) The date the forex option transaction was executed.

(3) To each retail forex customer engaging in forex option transactions, upon the expiration or exercise of any option, a written confirmation statement thereof, which statement shall include the date of such occurrence, a description of the option involved, and, in the case of exercise, the details of

the retail forex or physical currency position which resulted therefrom including, if applicable, the final trading date of the retail forex transaction underlying the option.

(c) Notwithstanding the provisions of paragraphs (b)(1) through (3) of this section, a retail forex transaction that is caused to be executed for a pooled investment vehicle that engages in retail forex transactions need be confirmed only to the operator of such pooled investment vehicle.

(d) *Controlled accounts.* With respect to any account controlled by any person other than the retail forex customer for whom such account is carried, each FDIC-supervised insured depository institution shall promptly furnish in writing to such other person the information required by paragraphs (a) and (b) of this section.

(e) *Introduced accounts.* Each statement provided pursuant to the provisions of this section must, if applicable, show that the account for which the FDIC-supervised insured depository institution was introduced by an introducing broker and the name of the introducing broker.

#### § 349.11 Unlawful representations.

(a) *No implication or representation of limiting losses.* No FDIC-supervised insured depository institution engaged in retail foreign exchange transactions or its IAPs may imply or represent that it will, with respect to any retail customer forex account, for or on behalf of any person:

(1) Guarantee such person or account against loss;

(2) Limit the loss of such person or account; or

(3) Not call for or attempt to collect margin as established for retail forex customers.

(b) *No implication or representation of engaging in prohibited acts.* No FDIC-supervised insured depository institution or its IAPs may in any way imply or represent that it will engage in any of the acts or practices described in paragraph (a) of this section.

(c) *No Federal government endorsement.* No FDIC-supervised insured depository institution or its IAPs may represent or imply in any manner whatsoever